

**CITY OF GAINESVILLE  
CITY COMMISSION**

*2010 MAR 16 PM 3:24*

IN RE: DEVELOPMENT REVIEW BOARD  
PETITION NO. DB-10-6  
(Wal-Mart Stores East, L.P.)

**NOTICE OF APPEAL**

Pursuant to Section 7(e) of the City of Gainesville ("City") Special Area Plan for Central Corridors, Ordinance No. 980015 (the "Central Corridors Plan"), John Hudson ("Hudson") files this Notice of Appeal of the City's Development Review Board ("DRB") approval on March 11, 2010 of Petition No. DB-10-6 (the "Petition") for a Wal-Mart Supercenter (the "Project") on 34<sup>th</sup> Street.

In support of this Notice, Hudson states as follows:

1. Hudson received a copy of the DRB's written decision on the Petition on March 16, 2010.
2. Hudson owns real property within 400 feet of the proposed Project and participated as an "affected person" in the quasi-judicial hearing on the Petition held by the DRB.
3. Hudson is aggrieved by the DRB decision approving the Petition by virtue of his ownership of said real property and the Project's non-compliance and inconsistency with the Central Corridors Plan.

4. The reasons for this Appeal are as follows:

- a. The Project is inconsistent with the intent of the Central Corridors Plan and does not qualify for any exceptions to Central Corridors standards allowable under Section 7(d) of the Central Corridors Plan.
- b. The Project, additionally, does not qualify for an exception to an increase in the required "Build-to line" because there are no site constraints to warrant not meeting the Build-to line standard, as required under Section 7(k) (2) of the Central Corridors Plan.
- c. The Project does not meet the "Building orientation" standard, because its "main entrance" is not on the "more primary street", as required under Section 7(n)(2) of the Central Corridors Plan.
- d. The DRB failed to consider or approve the required exception from the "Building orientation" standard.
- e. The Project fails to meet the "Building articulation" standard by not having window "glazing" covering at least 25% of the building wall facing the more primary street, as required under Section 7(o)(2) of the Central Corridors Plan.
- f. The Project is inconsistent with the City of Gainesville Comprehensive Plan.

Respectfully Submitted,

By: \_\_\_\_\_

John Hudson

Date: 3/16/2010

**Planning & Development Services**

PO Box 490

Gainesville, FL 32602-0490

352-334-5022

352-334-2648 (fax)

[www.cityofgainesville.org](http://www.cityofgainesville.org)

March 16, 2010

J. Chris Callaway, Regional V.P.  
Wal-Mart Stores East, LP  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, Arkansas 72716

**Petition DB-10-6: Highway 441 Super Wal-Mart.** Wal-Mart Stores East, LP, agent for Pinkson, et. al. Development plan review for construction of a retail supercenter with outparcels. Zoned: MU-2 (Mixed use medium intensity district). Located in the 5800 block of NW 34<sup>th</sup> Street, west side.

Mr. Callaway:

I am pleased to inform you that the preliminary development plan for the above referenced petition was approved with conditions by the Development Review Board on March 11, 2010. Please submit six (6) full sets, signed and sealed, of the revised plans that meet the conditions of approval. These final development plans must be submitted no later than six months from the date of the Development Review Board meeting where preliminary approval was granted. Once the plans have been certified as approvable by the appropriate members of the Technical Review Committee, we will send you a letter granting a Development Order and instructions for obtaining building permits.

Please make sure that the final development plans are delivered directly to an individual at the Planning and Development Services counter. If you have any questions or need additional information, please contact me at (352) 334-5023.

Sincerely,

Scott Wright  
Department of Planning and Dev. Services  
City of Gainesville

CC: Larry Wray; Karl Sanders  
XC: file

## CRITERIA TO BE CONSIDERED IN DEVELOPMENT PLAN REVIEW

Minor Plan

Intermediate Plan

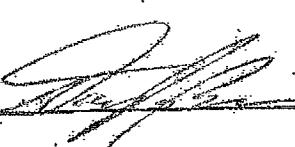
Major Plan

The appropriate reviewing board or the development review coordinator shall review any minor plan, intermediate plan, major plan or any amendment to any previously approved plan based upon the competent and substantial evidence presented by the reviewing authority, the petitioner, property owners, who are entitled to notice, affected persons, as determined by the board, and other interested persons related to any of the following factors:

- 1) Whether the plan meets submittal requirements of the land development code including payment of fees and compliance with submittal schedules to ensure adequate notice and review.
- 2) Whether the proposed development is consistent with the comprehensive plan, the land development code, applicable special area plans and other applicable regulations.
- 3) Whether the proposed development meets the level of service standards adopted in the City of Gainesville Comprehensive Plan. Proof of meeting these standards shall exist in the form of a certificate of concurrency exemption, certificate of preliminary or final concurrency (as applicable at the particular development review stage), or certificate of conditional concurrency reservation.
- 4) Whether the proposed development complies with other applicable factors and criteria prescribed by the comprehensive plan, the land development code or other applicable law.

A portion of the review process shall permit any interested person to address the appropriate reviewing board or the development review coordinator at the proper time. The appropriate reviewing board or the development review coordinator shall determine what evidence is relevant to the decision and shall limit its review to that relevant evidence. Formal rules of evidence shall not apply.

The Development Review Board (Appropriate Reviewing Board or Dev. Review Coordinator) has reviewed the above in arriving at a decision with reference to Petition DB-10-6 on 3/11/10.

Applicable signature 

cc:Chilepedos  
d/jw:7/9/96

Exhibit B. Special Area Plan for the Central Corridors  
Minimum Development Standards

(a) *Purpose.* The Central Corridors are established to improve the sense of place and community; improve the environment for businesses, including smaller, locally-owned businesses; support a healthy economy by providing a vibrant mix of commercial, office, retail and residential uses in close proximity; reduce crime by encouraging a 24-hour mix of uses and a significant number of pedestrians; strike a balance between the needs of the car and pedestrian by creating a pleasant ambiance and interesting *people-scaled* features, and make the pedestrian feel safe and convenient; increase transit viability; and improve independence of people without access to a car. The standards are designed to make Gainesville a more vibrant, livable place, and increase citizen pride in its development. The standards are designed to establish an important engine in job creation, a strengthened tax base, and an incubator for new, entrepreneurial, locally-owned businesses and entry-level job opportunities. The standards are also intended to protect the property values of nearby residential areas.

(b) *Effect of classification.* The Central Corridors standards are an overlay zoning district. They shall operate in conjunction with any underlying zoning district in the subject area. The regulations of the underlying zoning district, and all other applicable regulations, remain in effect and are further regulated by the Central Corridors standards. If provisions of the Central Corridors standards conflict with the underlying zoning, the provisions of the Central Corridors standards shall prevail.

(c) *Annual evaluation.* The City Plan Board shall conduct an evaluation of these standards on an annual basis.

(d) *Exceptions.* Exceptions to these standards can be granted by the appropriate reviewing board, city manager or designee, upon a finding that either of the following criteria are met:

1. The proposed construction is consistent with the overall intent of the Central Corridors standards; or

2. The applicant proves an undue hardship, owing to conditions peculiar to the land or structure and not the result of the action of the applicant, would result from strict adherence to these standards.

In addition to the exceptions that may be granted above, exceptions to the *build-to line* may be granted if the proposed construction includes an existing structure which has been designated as a historic property or has historic significance because it is potentially eligible for listing on the national or local register, and maintaining a viewshed of the existing historic structure is in the public interest.

(e) *Right to appeal.*

1. Any person aggrieved by a decision rendered by the appropriate reviewing board, city manager or designee may appeal the decision to the City Commission within 14 days from the date that the decision by the appropriate reviewing board, city manager or designee is reduced to writing and served by certified or registered mail, return receipt requested, to such person. The appeal shall be made by filing a written notice of appeal within the above-proscribed time period with the clerk of the city commission. The notice shall set forth concisely the decision under appeal and the reasons or grounds for the appeal.
2. The Planning and Development Services Department shall prepare the appeal for the City Commission. The appeal shall be ~~de novo~~ and shall be heard by the City Commission at its next regular meeting, provided at least 14 days have intervened between the time of the filing of the notice of appeal and the date of such meeting. The City Commission shall hear and consider all evidence and testimony placed before it, and shall render its decision promptly, based on competent, substantial evidence. The City Commission may affirm, amend or reverse the decision of the appropriate reviewing board, city manager or designee. The decision by the City Commission shall be reduced to writing and shall constitute final administrative

review. Appeals from decisions of the City Commission may be made to the courts as provided by law.

(f) *Definitions.* Defined terms are as defined in the Traditional City standards, section 4 of this Appendix, and are italicized in the text. Drawings are illustrative only. They do not represent required designs.

(g) *Delineation of Central Corridors Overlay District.* The Central Corridors overlay district shall apply to all lands adjacent to the streets shown on the map of the Central Corridors. Distances from the Central Corridors overlay district to structures outside the Central Corridors overlay district shall be measured from the nearest curb or edge of pavement.

(h) *Required compliance.* All new commercial, office, civic and multi-family buildings and developments shall be required to comply with the sections of the text labeled "standards." Automotive dealers (both new and used vehicles) located on N. Main Street north of N. 16th Avenue and south of N. 53rd Avenue are exempt from standards of this special area plan as applied through the Transportation Concurrency Exception Area.

(i) *Presumptive vested rights.* Developments shall be presumptively vested for the purposes of consistency with this overlay if they have filed a valid application for a preliminary development order issued by the city, as specified by Article VII, Division 1, prior to the effective date.

(j) *Non-conforming uses and buildings.*

(1) *Continuation of use.* A nonconforming use may be continued as provided in section 30-23, Non-Conforming Use, and section 30-346, Non-conforming Lots, Uses or Structures.

(2) *Expanding existing non-conforming uses.*

a. A special use permit may be issued for expansion of uses made non-conforming by the Central Corridors standards when the City Plan Board makes findings that the proposed expansion is in compliance with Article VII, Division 4, Special Use Permit.

- b. In addition, no permit for expansion of a non-conforming use shall be issued unless the City Plan Board makes the following findings concerning the proposed expansion:
  - 1. The expansion complies with the Central Corridors standards, as applicable;
  - 2. Auto Dealers, Auto Service and Limited Auto Services, and Gas Service Stations shall comply with sections 30-93 and 30-94;
  - 3. Carwashes shall comply with section 30-95;
  - 4. Outdoor Storage shall comply with section 30-97;
  - 5. Parking Lots, as the principal use other than structured parking or the use of existing parking lots shall comply with section 30-114;
  - 6. The expansion shall not reduce pedestrian safety by increasing driveway widths, adding a new driveway crossing to a sidewalk or crosswalk, or increasing the number of driveway lanes;
  - 7. The expansion shall not increase the size of signs on the site;
  - 8. The non-conforming use shall not be changed (except to a conforming use) as a result of the expansion;
  - 9. The expansion shall not result in a conversion of the non-conforming use from a seasonal to a year-round operation, nor shall it result in the use expanding its hours of operation;
  - 10. Outdoor storage areas shall not be expanded or located any closer to residential development as a result of the expansion; and